

DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

2012 LEGISLATIVE SUMMARY

The following bills, affecting or related to California's civil rights statutes, were signed and chaptered into law by Governor Edmund G. Brown, Jr., in 2012. Unless otherwise noted, the measures became effective January 1, 2013. They are organized by subject matter.

STATE GOVERNMENT

SB 1038 (Committee on Budget and Fiscal Review) (Stats. 2012, ch. 46.)

The provisions of SB 1038 that impact the Department of Fair Employment and Housing eliminated the Fair Employment and Housing Commission and transferred its functions to the Department. Specifically, SB 1038: (1) eliminated the Commission's adjudicatory function; (2) authorizes the Department to file suit on unresolved merit cases directly in court; (3) authorizes courts to award the Department attorneys' fees when it is the prevailing party to litigation; (4) requires the Department to mediate all merit cases before filing suit; and (5) created a Fair Employment and Housing Council within the Department to promulgate regulations interpreting substantive rights and obligations under the Fair Employment and Housing Act (FEHA). The bill also established the Fair Employment and Housing Enforcement and Litigation Fund in the State Treasury to be administered by the Department, subject to appropriation, for deposit of attorney's fees and costs awarded to the Department.

Code Sections Amended: Business and Professions Code section 19604; Corporations Code section 318; Food and Agriculture Code section 57031; **Government Code sections** 3502.5, 3507.1, 3507.3, 3513, 3527, 3541.3, 3563, 8240, 8241, 8245, 10210, 11139.5, 11532, 11538, 11540, 11544, 12804, **12901, 12903, 12904, 12905, 12906, 12925, 12930, 12935, 12944, 12946, 12947.5, 12950, 12950.1, 12961, 12963.5, 12964, 12965, 12966, 12973, 12974, 12975, 12980, 12981, 12981.1, 12983, 12985, 12988, 12989.1, 12989.2, 12990**, 19704, 19815, 50085.5, 71632.5, 71636.1, 71636.3, and 71637; Health and Safety Code section 102346; Insurance Code section 11770; Labor Code sections 56, 138.7, 150, 151, 152, 153, 156, 511, 515.5, 515.6, 1202, 1773.3, 1776, 1777.5, 1777.7, 2012, 2013, 2686, 3072, 3073, 6332, 6401.7, 6409, 6409.1, 6410, 6411, 6413, 6413.2 and the heading of Chapter 7 (commencing with Section 150) of Division 1 of the Labor Code; Penal Code sections 422.92, 13519, 13776, 13777.2, and 13836.1; Public Utilities Code sections 25051, 28850, 30750, 30751, 40120, 50120, 70120, 90300, 99561, 95650, 98162.5, 100301, 101341, 102401, 103401, and 125521; Unemployment Insurance Code section 401; Section 4.2 of the Fresno Metropolitan Transit District Act (Chapter 1932 of the Statutes of 1961), and Sections 13.90 and 13.91 of the West Bay Rapid Transit Authority Act (Chapter 104 of the First Extraordinary Session of the Statutes of 1964).

Code Sections Added: **Government Code section 12907**; also Division 4.5 (commencing with Section 3600) to Title 1 of the Government Code and Article 3

(commencing with Section 10270) to Title 2, Division 2, Part 2, Chapter 1 of the Government Code; Chapter 4.5 (commencing with Section 108) to Division 1 of the Labor Code.

Code Sections Repealed: Government Code sections 11535, 11536, 11537, 11543, 12967, 12968, 12969, 12970, 12972, 12987, 12987.1, and 12989 and Title 2, Division 1, Chapter 3.5, Article 1 (commencing with section 8260) and Title 2, Division 3, Part 5.6 Chapter 1 (commencing with section 14995) of the Government Code; Labor Code sections 65, 3099, 3099.2, 3099.3, 3099.4, and 3099.5 and Division 2, Part 3, Chapter 9 (commencing with section 1137) of the Labor Code.

EMPLOYMENT

Workplace Religious Accommodations

AB 1964 amended the FEHA to: (1) clarify that an employer's obligation to accommodate employees' religious beliefs or observances includes accommodating religious dress and grooming practices, as defined; (2) clarify that the standard for determining whether a religious accommodation poses an undue hardship is the same standard used for evaluating disability accommodations; and (3) state expressly that an accommodation is not reasonable if it requires segregation of an employee from customers or the general public.

Bill Number: AB 1964 (Yamada) (Stats. 2012, ch. 287.)

Code Sections Amended: Government Code sections 12926 and 12940.

Code Section Added: None.

Sex Discrimination

AB 2386 amended the FEHA's definition of "sex," which includes but is not limited to pregnancy, childbirth or medical conditions related to pregnancy or childbirth—to clarify that "sex" also includes breastfeeding and medical conditions related to breastfeeding.

Bill Number: AB 2386 (Allen) (Stats. 2012, ch. 701.)

Code Sections Amended: Government Code section 12926.

Code Section Added: None.

PUBLIC ACCOMMODATIONS

Disability Access

SB 1186 reduced the minimum statutory damages for which small business owners may be liable for unintentional construction-related accessibility violations if the violation is corrected within 60 or 30 days of service of a civil complaint, as specified. The bill also: (1) prohibits attorneys and non-attorneys from making prelitigation written and oral demands for money for construction-related accessibility violations and regulates the

content of demand letters; (2) requires that civil complaints alleging construction-related accessibility violations be pled with specificity and verified; and (3) requires attorneys to submit construction-related accessibility violation demand letters and civil complaints to the State Bar of California and to the California Commission on Disability Access. The bill was signed by the Governor on September 19, 2012, filed with the Secretary of State on September 19, 2012, and took effect immediately.

Bill Number: SB 1186 (Steinberg) (Stats. 2012, ch. 383.)

Code Sections Amended: Civil Code sections 55.3, 55.52, 55.53, 55.54, and 55.56.

Code Sections Added: Civil Code sections 5.31, 55.545, and 1938; Code of Civil Procedure section 425.50; Government Code sections 4459.8 and 8299.05 and also Chapter 7.5 (commencing with Section 4465) to Division 5 of Title 1 of the Government Code.

Code Sections Amended & Repealed and/or Added & Repealed: Business and Professions Code section 6106.2; Civil Code section 55.32.

Code Sections Repealed & Added: Government Code sections 8299.06, 8299.07, and 8299.08.

RELATED STATUTES

LSAT Testing Accommodations

AB 2122 amended the Education Code to expressly require the Law School Admission Council to: (1) provide testing accommodations to test subjects with a disability who timely request an accommodation for the Law School Admission Test; (2) give considerable weight to documentation of past accommodations a test subject received in similar testing situations, when determining whether to grant an accommodation; (3) communicate its decision to a requestor in writing, including the reason(s) for denial when an accommodation is denied; (4) establish a timely appeals process; and (5) post clearly on its Internet Web site refund policies for individuals whose requests for accommodation are denied.

Bill Number: AB 2122 (Lara) (Stats. 2012, ch. 583.)

Code Sections Amended: None

Code Section Added: Education Code section 99161.5.